

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Petition of Verizon California Inc. for a Commission Order Instituting Rulemaking to Adopt, Amend or Appeal a Regulation Pursuant to Public Utilities Code Section 1708.5 in Order to Establish Rules Governing the Transfer of Customers from Carriers Exiting the Local Telecommunications Marketplace.

Petition 02-05-014  
(Filed May 3, 2002)

Order Instituting Rulemaking to Establish Rules Governing the Transfer of Customers from Competitive Local Carriers Exiting the Local Telecommunications Market.

FILED  
RULEMAKING 03-\_\_-\_\_  
PUBLIC UTILITIES COMMISSION  
SAN FRANCISCO

**OPINION GRANTING PETITION FOR RULEMAKING  
AND ORDER INSTITUTING RULEMAKING  
TO ESTABLISH RULES GOVERNING THE  
TRANSFER OF CUSTOMERS FROM COMPETITIVE LOCAL  
CARRIERS EXITING THE LOCAL TELECOMMUNICATIONS MARKET**

**Summary**

After considering all the comments, we grant the Petition for a rulemaking to establish rules governing the transfer of customers from carriers exiting the local telecommunications market. We will consider rules and/or guidelines to facilitate the migration of customers from exiting to acquiring carriers without interruptions in service.

**Background and Procedural History**

Pub. Util. Code § 1708.5(a)<sup>1</sup> authorizes “interested persons to petition the commission to adopt, amend, or repeal a regulation.” In Decision (D.) 00-07-035, which resolved the first petition filed under § 1708.5, the Commission reviewed the statute’s legislative history, including the uncodified statement of legislative intent.<sup>2</sup> We do not repeat that analysis here.

The focus of this Petition is the adoption of rules governing customer transfers when competitive local exchange carriers (CLEC) exit the local telecommunications market. Verizon California Inc. (Verizon or Petitioner) proposes that we consider mass migration rules to address customer and carrier issues.

Verizon filed this Petition on May 3, 2002, and served the Petition upon the service list established for Rulemaking (R.) 95-04-043. On May 20 and June 3, 2002, the following parties filed responses: Cox California Telcom, L.L.C. (Cox), Allegiance Telecom of California, Inc. (Allegiance), and Pacific Bell Telephone Company (Pacific). Verizon filed a reply on June 13, 2002.

**Petitioner’s and Commenter’s Proposals**

Verizon asks the Commission to issue a rulemaking to consider rules to effect the orderly transfer of abandoned voice and data end-user customers in all situations. Verizon proposes rules that would preclude any carrier from the requirement to serve the exiting carrier’s customer base, would permit the acquiring carrier the time necessary to transition customers even if services are

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<sup>1</sup> Unless stated otherwise, all statutory citations refer to the California Public Utilities Code.

<sup>2</sup> See D.00-07-035, 2000 Cal. PUC LEXIS 585.

interrupted, would suspend service quality obligations and penalties applicable to any acquiring carrier during the transition period, would permit the carrier to apply its normal credit and collection processes, and would permit the carrier to provide a standard package of its services at its tariffed or established rates.

Verizon further proposes rules that would require the exiting carrier to keep its facilities in operation until acquired by another carrier, to issue notice to customers at its own expense, and to provide to the Commission a request to withdraw no later than sixty days prior to any proposed withdrawal, to stay in business long enough to cooperate with any acquiring carrier, to bear the normal costs of transitioning customers, to unlock its TN records in those E911 databases that are necessary to allow its customers to be transitioned, to notify the North American Numbering Plan administrator of its intention to discontinue service, and to remove any LPIC freezes. Verizon also proposes that customer transfers be completed in a manner that complies with state and federal anti-slamming rules.

Cox, Allegiance, and Pacific all support the Petition's request for a rulemaking but only Pacific supports most of the specific proposals offered by Verizon. Cox notes that Verizon's proposed rules benefit incumbent local exchange carriers (ILECs). Allegiance recommends that the Commission consider mass migration rules comparable to those adopted by the New York Public Service Commission and also consider CLEC to CLEC migration rules. Pacific notes that complete cooperation of an exiting CLEC is necessary for an immediate transition of a customer's service, local number portability issues may arise if a CLEC's switch is not active until all codes are migrated, and that E911 issues can arise.

Verizon responds that it supports expanding the rulemaking to consider issues not raised in its Petition. Verizon does not oppose the use of the New York mass migration guidelines as a starting point for discussion and only opposes those aspects of those guidelines that conflict with its proposal.

### **Discussion**

Although Verizon is correct that we have handled many CLEC exit issues on a case-by-case basis, we also have some guidelines in place and are considering others. In R.98-07-038, we adopted customer notice requirements that utilities must follow when withdrawing from providing service or transferring customers. In that rulemaking we also proposed telecommunications industry rules that govern whether the utility files an advice letter or an application to withdraw from providing basic service. The advice letter process establishes a timetable for approval and in effect sets the timeframe for providing formal notice to the Commission of a carrier's intent to withdraw from service. Any proposed rules in this proceeding should be consistent with the rules already in place or being considered.

Verizon and Pacific queried whether slamming issues may arise with customer transfers not at the customer's request. We have considered whether the third party verification requirements of Pub. Util. Code § 2889.5 apply to customer base transfers from an exiting CLEC to an ILEC and have determined that they do not. (D.01-11-045, Conclusion of Law 3; *see, e.g.*, D.97-12-119, 1997 Cal. PUC LEXIS 1146 \*2.)

We have required carriers of last resort, to date ILECs, to accept all exiting carriers' customers subject to rights to terminate those customers after proper notice. We have resolved ILEC obligations when exiting carriers are facilities-based and the ILEC has no facilities in place. We also have had to

consider the exigencies of bankruptcy proceedings and requests for expedited approvals.

The mass migration rules adopted by the New York Public Service Commission (NYPSC) provide further guidance on the direction we should take in instituting a rulemaking. The NYPSC guidelines govern the following areas: regulatory notification, industry notification, customer notification, mass migration process (obligations of program and project managers and CLECs in mass migrations), NXX code transfers, default carrier and termination actions when normal migration procedures have failed, and criteria for NYPSC approval of termination of service. (*Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers*, 2003 N.Y. PUC LEXIS 216 \*28, Mass Migration Guidelines, as revised January 2, 2003.) The objective of the New York Commission's guidelines is to provide customers of a carrier discontinuing local exchange services the opportunity to migrate to another local exchange carrier without interruption of service. The guidelines are flexible, because the circumstances under which CLECs exit the local exchange market vary. Flexible rules would accomplish the major objective of Verizon – to permit customers the opportunity to choose another provider.

There are distinctions between the NYPSC mass migration process and our existing rules. We have adopted customer notice requirements within the application process and have proposed rules governing whether an application or an advice letter should be filed. Our staff neither maintains a web site that posts information on exiting carriers nor distributes that information. New York also has CLEC-to-CLEC migration rules, which govern the intricacies of that form of customer migration, whereas we do not. We would need to determine

whether it would be beneficial to California customers for this Commission to facilitate the development of CLEC-to-CLEC migration rules.

### **Proposed Rulemaking**

In this rulemaking, we intend to consider rules and/or guidelines to facilitate the migration of customers from exiting to acquiring carriers without interruptions in service. To accomplish that goal we will consider whether we need to adopt rules or guidelines to facilitate customers' choice of a new carrier in mass migrations, to impose additional requirements on exiting CLECs, to relieve acquiring ILECs of certain obligations during the transition period, and to promote cooperation between acquiring and exiting carriers. Because the NYPSC mass migration guidelines resulted from a collaborative process and were revised after experience with their effectiveness, they provide a starting point for our consideration of rules governing the transfer of customers from carriers exiting the local telecommunications market. The specific issues we will examine are listed in the scoping memo, below.

### **Preliminary Scoping Memo**

This rulemaking will be conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure. As required by Rule 6(c)(2), this order includes a preliminary scoping memo as set forth below. The issues to be considered in this proceeding include, but are not limited to:

1. Should the Commission adopt rules or guidelines to facilitate end-user customers' selection of their carrier of choice when a CLEC exits the local exchange market?
2. Should the Commission adopt on an interim basis the New York Public Service Commission's Mass Migration Guidelines, revised as necessary, to govern the transfer of customers from carriers exiting the local telecommunications market?

- a. If yes, what revisions to those regulations would be required to conform to the Commission's regulatory environment? For example, does the application or advice letter process substitute for maintaining a web site of exiting carrier information and/or for sending that information to designated contacts; should the information required in the exit plan be included in an application or advice letter; should exiting carriers provide customer lists to Telecommunications Division (TD) staff; should exiting carriers provide progress reports to TD staff; and are the criteria for approving termination requests consistent with the criteria governing Commission approval of applications or advice letters?
  - b. If yes, should the Commission convene workshops to discuss implementation issues before finally adopting the Mass Migration Guidelines?
  - c. If no, should the Commission solicit proposals for other processes and/or commence a collaborative process?
3. Under what circumstances should the Commission require ILECs to be the carrier of last resort or default provider for the customers of an exiting CLEC.
4. Should the Commission suspend service quality obligations and applicable penalties for a carrier during the period that carrier is acquiring an exiting carrier's customers?
5. Should the Commission establish rules governing coordination of our proceedings with those in bankruptcy courts, termination of the CLEC's certificate of public convenience and necessity, and payment of all regulatory fees and charges by an exiting CLEC?
6. Should the Commission facilitate CLEC-to-CLEC migration rules?

In addition to other comments provided in response to this rulemaking, parties should respond to the above-listed issues.

### **Categorization**

Pursuant to Rule 6(c)(2), we preliminarily determine the category of this rulemaking proceeding to be quasi-legislative as the term is defined in Rule 5(d). Consistent with this categorization, we intend to establish policies and rules governing the migration of customers from exiting CLECs to acquiring carriers based on written comments we receive from the parties. At this time we do not anticipate holding hearings. However, parties will have the opportunity to comment on the necessity for hearings, and we may re-evaluate both the categorization and need for hearings after review of the comments.

### **Schedule**

It is our intention to solicit an initial round of opening comments from interested parties. As a first step, interested parties shall file responses to this Order as outlined above. As required by Rule 6(c)(2), any party filing a response to the Order shall state in its response any objections the party has regarding (1) the categorization of this proceeding as “quasi-legislative,” (2) the determination that there is no need for hearings, and (3) the preliminary scope and timetable for this proceeding as described in this Order. Any party who believes that a hearing is required should, in its response, identify and describe (1) material issues of fact and (2) the evidence the party proposes to introduce at the requested hearing. Any right that a party may otherwise have to a hearing will be waived if the party does not submit such information in its response.



In accordance with Rule 6.3 and 6(c)(2), the proposed schedule is as follows:

Opening Comments	60 days following issuance of this rulemaking
Reply Comments	30 days after filing of opening comments
Issuance of Draft Decision	90 days after filing of reply comments
Final Decision	30 days after issuance of draft decision

The proposed schedule may change, and will be refined by ruling if necessary.

The assigned Commissioner will issue a scoping memo that finalizes the category, scope and schedule of this proceeding (Rules 6(c)(2) and 6.3). After the issuance of this ruling, parties may file and serve an appeal to the Commission regarding the assigned Commissioner's ruling on category (Rule 6.4). Consistent with Rule 6(e), we expect that this proceeding will be concluded within 18 months.

#### **Service of this Order and Service List for Proceeding**

All CLECs and ILECs in California are potentially affected by this rulemaking. Our local competition rulemaking and investigation, R.95-04-043/I.95-04-044, includes both CLECs and ILECs that have participated in the development of rules affecting local competition. Therefore, we shall serve this order on the service list in R.95-04-043/I.95-04-044.

Anyone wishing to be placed on the service list we will develop for this proceeding should submit his or her request within 20 days of the issuance of this order to the Process Office, 505 Van Ness Avenue, San Francisco, California 94102. Parties should reference this proceeding number and indicate whether they wish to be on the service list for this proceeding. In addition to the party's name, the name of their representative (if any), their address, and telephone and facsimile numbers, an e-mail address should be provided by each party unless

the party states that no email address is available. A service list will then be prepared and posted on the Commission's web site at [www.cpuc.ca.gov](http://www.cpuc.ca.gov) as soon as practicable. Requests to be included in the service list made more than 20 days after the issuance of this order must be sent to, and approved by, the assigned Administrative Law Judge (ALJ).

Those persons who do not want to be parties, and only want notice of the hearings, rulings, proposed decisions, and decisions, may mail a written request or send an electronic request to the Process Office asking that they be added to the service list for information only.

Those persons employed by the State of California who are interested in this proceeding may be added to the "state service" section of the service list may mail a written request or send an electronic request to the Process Office asking that they be added to the state service list. All of the names that appear on the state service list shall be served with all documents that parties may submit or file in connection with this proceeding.

Any person interested in participating in this ruling who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor Office in San Francisco at (415) 703-2074, or in Los Angeles at (213) 649-4782.

### **Electronic Service**

Each Appearance with an electronic mail (e-mail) address on the official service list shall serve and receive all pleadings by e-mail in Microsoft Word format or Adobe Acrobat Portable Document Format (.pdf). There is no need to serve hard copies of pleadings on any party listed in the Appearance category, or the State Service category, of the service list if that party has provided an e-mail address. However, if a party in the Appearance or State Service categories has

not provided an e-mail address, then that party must be served with a hard copy. Finally, both an electronic and paper copy of each pleading must be served on the assigned Commissioner and assigned ALJ.

Any person interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor Office in San Francisco at (415) 703-2074, or in Los Angeles at (213) 649-4782.

### **Ex Parte Communications**

This proceeding is subject to Rule 7, which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rules 7(a)(4) and 7(d), ex parte communications will be allowed in this proceeding without any restrictions or reporting requirements until the assigned Commissioner makes an appealable determination of category. Following the Commissioner's determination, the applicable ex parte communications and reporting requirements shall depend on such determination unless and until the determination is modified by the Commission pursuant to Rules 6.4 and 6.5.

### **Assignment of Petition**

Carl Wood is the Assigned Commissioner and Janice Grau is the assigned Administrative Law Judge to the Petition to institute a rulemaking.

### **Findings of Fact**

1. On May 3, 2002, Verizon California Inc. filed a Petition requesting that the Commission institute a rulemaking to establish rules governing the transfer of customers from carriers exiting the local telecommunications market.

2. It is reasonable to initiate an order instituting a rulemaking to facilitate the migration of customers from exiting to acquiring carriers without interruptions in service.

3. It is therefore reasonable to grant the Petition to the extent that it requests the initiation of such a rulemaking.

### **Conclusions of Law**

1. Pursuant to Public Utilities Code Section 1708.5, the Commission has the authority to consider a petition requesting the initiation of a rulemaking to establish rules governing the transfer of customers from carriers exiting the local telecommunications market.

2. To the extent that the Petition requests the initiation of a rulemaking to facilitate the migration of customers from exiting to acquiring carriers without interruptions in service, it should be granted and such rulemaking should be initiated.

## **O R D E R**

### **IT IS ORDERED** that:

1. To the extent that the Petition of Verizon California Inc. requests the initiation of a rulemaking to facilitate the migration of customers from exiting to acquiring carriers without interruptions in service, it is granted.

2. A rulemaking on the Commission's own motion into facilitation of the migration of customers from exiting to acquiring carriers without interruptions in service is hereby initiated.

3. We direct all parties who wish to be included on the service list for this proceeding to send a letter to the Commission's Process Office no later than 20 days from the issuance of this order. Thereafter, such requests must be sent to, and approved by, the assigned administrative law judge.

4. Interested parties shall file and serve their responses to this Order Instituting Rulemaking within 60 days of issuance of this rulemaking and reply responses within 90 days of issuance of this rulemaking in accordance with the Commission's rules for filing and serving documents. In their responses, parties should address the issues listed above.

5. As required by Rule 6(c)(2) of the Commission's Rules of Practice and Procedure, any party filing a response to this order shall state in the response any objections to (i) the categorization of this proceeding as quasi-legislative, (ii) the determination that there is no need for hearings, and/or (iii) the preliminary scope and timetable for this proceeding.

6. Any party who believes that a hearing is required in this proceeding shall make that request in the party's response to this Order. Any right that a party may otherwise have to a hearing will be waived if the party does not submit such a request in its response.

7. The Executive Director shall serve this Order on the service list in Rulemaking 95-04-043/Investigation 95-04-044.

8. Petition 02-05-014 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.